

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

UNITED STATES OF AMERICA

PLAINTIFF

v.

CASE NO. 2:03CR20006

GERRY EUGENE PARKS

DEFENDANT

ORDER

Currently before the court are Defendant's Motion Pursuant to Rule 52(b) (Doc. 47) and the Government's Response (Doc. 48). Defendant moves the Court to reduce his sentence based upon what he contends are errors in the presentence report and the Court's calculation of the guideline range.

Rule 35 allows the Court to correct or reduce a sentence in certain instances: (1) within 7 days after sentencing to correct a sentence that resulted from arithmetical, technical, or other clear error; and (2) upon the government's motion indicating the defendant provided substantial assistance. Defendant does not allege that either instance applies in his case, and the Court finds that a reduction of Defendant's sentence pursuant to Rule 35 is not warranted. Instead, Defendant's Motion focuses on errors he believes were committed in the Court's calculation of his guideline sentencing range.

Defendant was represented by counsel during the preparation of the presentence report in this matter and was afforded ample opportunity to object to any portion of the report he felt was in error, including the proposed guideline calculations.

Additionally, Defendant had an opportunity at his sentencing hearing to object to the Court's calculation of his guideline sentencing range. Finally, any objections to the presentence report that were not raised at sentencing are waived. *United States v. Mora-Higuera*, 269 F.3d 905 (8th Cir. 2001).

Defendant was sentenced on July 11, 2003, and did not appeal his sentence. Defendant did not file a §2255 motion challenging his sentence. On April 7, 2008, the Court denied Defendant's Motion for Reduction of Sentence pursuant to 18 U.S.C. §3582 based upon Defendant's Career Offender status, and Defendant did not appeal this order. Accordingly, Defendant's Motion is DENIED.

IT IS SO ORDERED this 11th day of August 2009.

/s/ Robert T. Dawson
Honorable Robert T. Dawson
United States District Judge